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as Auditor, etc., appeals. Affirmed in part, reversed in part, and remanded.

*Plummer & Bohannon*, of Petersburg, for appellant.

*Carter, Crawford & Redd*, of Richmond, for appellee.

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HONAKER *v.* WHITLEY.

Jan. 16, 1919.

[97 S. E. 808.]

**1. Physicians and Surgeons (§ 18 (8)\*)—Action for Malpractice—Evidence.**—In an action against a dentist for malpractice, where it appeared that plaintiff, who had consulted defendant and then another dentist, suffered a fractured jaw as a result of the treatment of one or the other, evidence held insufficient to establish that defendant fractured plaintiff's jaw, so as to warrant judgment against him.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 205.]

**2. Negligence (§ 121 (5)\*)—Proof—Cause of Injury.**—Where injuries have resulted from one or two causes for one of which defendant is responsible, plaintiff must fail if his evidence does not show that the damages are produced by the former cause.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 372.]

Error-to Law and Equity Court of City of Richmond.

Action by A. A. Whitley against E. S. Honaker. There was a judgment for plaintiff, and defendant brings error. Reversed, and new trial granted.

*Byrd, Fulton & Byrd* and *W. C. Pulliam*, all of Richmond, for plaintiff in error.

*Jas. R. Sheppard, Jr.*, and *T. J. Moore*, both of Richmond, for defendant in error.

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E. I. DU PONT DE NEMOURS & CO. *v.* SNEAD'S ADM'R.

Jan. 16, 1919.

[97 S. E. 812.]

**1. Pleading (§ 9\*)—Matters of Law.**—Declaration need not state existence of legal duty, but only facts out of which duty arises; the legal duty being a matter of law of which the court takes judicial notice.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 218.]

**2. Master and Servant (§ 256 (1)\*)—Action for Tort of Servant—Pleading.**—In action for damages for death of plaintiff's intestate,

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.